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Attorneys for Defendants  
ROBERT ELMBURG and ROCKY FLICK

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL MONTGOMERY,

Plaintiff,

v.

WAL-MART STORES, INC.;  
KINDERHOOK INDUSTRIES II, L.P.;  
KINDERHOOK INDUSTRIES, L.L.C.;  
KINDERHOOK CAPITAL FUND II, L.P.;  
CRESTWOOD HOLDINGS, INC.;  
BERGAN, L.L.C.; JOHN ELMBURG;  
ROBERT ELMBURG; ERIC ELMBURG;  
ROCKY FLICK; HOME DEPOT U.S.A.,  
INC.; DOES 1 through 20 inclusive,

Defendants.

Case No.: 12CV3057 L (WVG)

**DEFENDANT ROCKY FLICK'S  
NOTICE OF MOTION AND  
MOTION TO DISMISS FOR  
LACK OF PERSONAL  
JURISDICTION (12(B)(2)), LACK  
OF STANDING (12(B)(1)),  
FAILURE TO STATE A CLAIM  
(12(B)(6)) AND MOTION TO  
STRIKE (12(F))**

Date: April 2, 2013  
Time: 10:30 a.m.  
Ctvm: 5B  
Judge: Hon. M. James Lorenz

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2013, at 10:30 a.m., or as soon thereafter as this matter may be heard, in Courtroom 5B of the above Court, Defendant ROCKY FLICK ("Flick") will and hereby does move the Court for an order dismissing the claims against him in the above styled action pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction, Fed. R. Civ. P. 12(b)(1) for lack of standing, pursuant to 12(b)(6) for failure to state a claim, and for

1 an order striking Plaintiff's claim for punitive damages and for attorneys' fees and  
2 costs pursuant to Fed. R. Civ. P. 12(f).

3 Flick's motion is based upon this Notice and Motion and the accompanying  
4 Memorandum of Points and Authorities, the Declaration of Rocky Flick and the  
5 pleadings and other papers on file with the Court.

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7 Dated: February 26, 2013

**DUANE MORRIS LLP**

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9 By: /s/ Patricia Hollenbeck  
10 Patricia P. Hollenbeck  
11 Rebecca G. Church  
12 Attorneys for ROBERT ELMBURG and  
13 ROCKY FLICK  
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